

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #7	CCRB Case #: 201702367	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 03/25/2017 10:56 PM	Location of Incident: In the vicinity of § 87(2)(b) [REDACTED]	Precinct: 23	18 Mo. SOL 9/25/2018	EO SOL 9/25/2018	
Date/Time CV Reported Sat, 03/25/2017 12:45 AM	CV Reported At: IAB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 03/28/2017 9:38 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			Unknown
2. POM Christophe Pino	14668	957039	PSA 5
3. POM Moahmmad Uddin	14848	956309	PSA 5
4. SGT Jose Capella	00748	915058	PSA 5
5. POM Jonathan Trahan	21000	955590	025 PCT
6. An officer			Unknown
7. POM Anthony Baresi	03106	951522	PSA 5
8. POM Andrew Mancusi	10763	956059	PSA 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Taylor Young	31898	955683	025 PCT
2. POM Kelvin Gomez	26554	948345	PSA 5
3. POM Pedro Medina	17226	958915	PSA 5
4. DI Erik Hernandez	00000	901689	PSA 5
5. POM Joseph Parisi	21188	959046	PSA 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
6. POM Diemson Rigodon	13798	956199	PSA 5
7. POM Nicholas Henry	07642	941891	023 PCT
8. POM Gregory King	26847	942010	023 PCT
9. SGT John Fattorusso	02309	945710	023 PCT
10. POM Jonathan Goenner	15852	941821	023 PCT
11. SGT Eliezer Caraballo	03885	917379	023 PCT
12. POM Justin Esposito	21264	959618	023 PCT
13. POM Tyler Conner	21098	951630	023 PCT
14. POM Fausto Gomez	13157	941930	025 PCT
15. SGT Thomas Boller	1463	946794	SPL TRN
16. POM Umer Alam	10853	946725	PSA 5
17. POM Jose Santini	11211	956237	PSA 5
18. POM Moises Ramos	14571	956009	PSA 5
19. POM Daniel Rodney	02818	949555	PSA 5
20. POM Steven Grice	17934	961796	PSA 5
21. POM Joshua Faranda	31043	938461	PSA 5
22. SSA Daniel Miller	02549	919418	032 PCT
23. POM Michael Ganz	04821	947016	032 PCT
24. POM Sean Doheny	10310	948899	032 PCT
25. POM Kuzman Simunovic	18891	951261	023 PCT
26. POF Ana Diaz	06333	958501	PSA 5
27. SGT Kevin Marshal	00000	942128	PSA 5

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Pino	Force: Police Officer Christopher Pino used physical force against § 87(2)(b)	
B.POM Moahmmad Uddin	Abuse: Police Officer Moahmmad Uddin threatened § 87(2)(b) and individuals with the use of force.	
C.POM Andrew Mancusi	Force: Police Officer Andrew Mancusi used physical force against § 87(2)(b)	
D.POM Anthony Baresi	Force: Police Officer Anthony Baresi used physical force against § 87(2)(b)	
E.SGT Jose Capella	Abuse: Sergeant Jose Capella entered and searched § 87(2)(b) in Manhattan.	
F.POM Moahmmad Uddin	Abuse: Police Officer Moahmmad Uddin entered § 87(2)(b) in Manhattan.	
G.SGT Jose Capella	Abuse: Sergeant Jose Capella authorized a search of § 87(2)(b) in Manhattan.	
H. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
I. An officer	Force: An officer used physical force against § 87(2)(b)	
J. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
K. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
L. Officers	Force: Officers used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
M.SGT Jose Capella	Force: Sergeant Jose Capella used physical force against § 87(2)(b)	
N.POM Moahmmad Uddin	Force: Police Officer Moahmmad Uddin used physical force against § 87(2)(b)	
O.POM Jonathan Trahan	Force: Police Officer Jonathan Trahan used physical force against § 87(2)(b)	
P. Officers	Force: Officers used physical force against § 87(2)(b)	
Q. An officer	Force: An officer used physical force against § 87(2)(b)	
R. An officer	Force: An officer used physical force against § 87(2)(b)	
S. Officers	Force: Officers used physical force against § 87(2)(b)	
T. An officer	Force: An officer used physical force against § 87(2)(b)	
U. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	

Case Summary

This complaint was filed by § 87(2)(b) with IAB on March 25, 2017, generating log number 2017-10831. A duplicate complaint was later filed at PSA 5 by § 87(2)(b) on March 26, 2017, with an additional duplicate complaint filed by § 87(2)(b) at PSA 5 on March 27, 2017. The CCRB received this case on March 28, 2017.

On March 25, 2017, at approximately 10:56 p.m., PO Christopher Pino and PO Moahmmad Uddin, from PSA 5, were conducting an interior patrol of § 87(2)(b) in Manhattan, when they observed § 87(2)(b) sitting with § 87(2)(b) and § 87(2)(b) smoking marijuana in the tenth floor stairwell. While attempting to handcuff § 87(2)(b) § 87(2)(b) spit in PO Pino's face multiple times, and PO Pino allegedly pushed § 87(2)(b) onto the stairs prior to handcuffing him (**Allegation A**). § 87(2)(b)'s family entered the stairwell during this interaction, and PO Uddin allegedly took his baton out (**Allegation B**). § 87(2)(b) after being placed in handcuffs, was taken to the elevators on the ninth floor where PO Andrew Mancusi and PO Anthony Baresi, of the PSA 5 Anti-Crime Unit, allegedly kicked him in the back of his knee, pushed him against the wall, and stomped on his head (**Allegations C and D**).

Backup officers from PSA 5, the 23rd Precinct, the 25th Precinct, and the 32nd Precinct responded to the location, and entered § 87(2)(b), "belonging to § 87(2)(b) (**Allegations E, F, and G**). While entering the apartment, an unidentified officer allegedly told § 87(2)(b) in the tenth floor stairwell, "Shut the fuck up," and, "Fuck you" (**Allegation H**). Upon entering the apartment, an unidentified officer allegedly punched § 87(2)(b) in the face (**Allegation I**). Officers searched the apartment for PO Pino and PO Uddin (**Within Allegation E**), and an officer allegedly told § 87(2)(b) "Shut the fuck up" (**Allegation J**). While the officers were inside of the apartment, an unidentified officer allegedly told § 87(2)(b) "Shut the fuck up," and, "Don't touch the fucking cop" (**Allegation K**). PO Uddin then entered the apartment and informed Sgt. Capella that § 87(2)(b) pushed him and fled into the apartment (**Within Allegation F**). PO Uddin then searched the apartment for § 87(2)(b) (**Within Allegation G**). While trying to get § 87(2)(b) in handcuffs, an unidentified officer allegedly punched § 87(2)(b) in the face and officers took both him and § 87(2)(b) to the ground, allegedly pulling § 87(2)(b)'s hair in the process (**Within Allegations F and G; Allegations L, M, N, O, and P**). During the struggle to get § 87(2)(b) into custody, an officer allegedly pushed § 87(2)(b) into a microwave and allegedly punched § 87(2)(b) in the face (**Allegations Q and R**). When § 87(2)(b) was being escorted out of § 87(2)(b) unidentified officers allegedly used unspecified force against him near the elevators on the tenth floor (**Allegation S**).

While officers were inside of § 87(2)(b) § 87(2)(b) was handcuffed by an officer outside of the apartment, near the elevators on the tenth floor. After being handcuffed, an unidentified officer allegedly kicked § 87(2)(b) in the testicles and allegedly told him, "Ah, shut the fuck up" (**Allegations T and U**).

§ 87(2)(b) was arrested and charged with § 87(2)(b) as a result of this incident, while § 87(2)(b) was arrested for both § 87(2)(b). Additionally, § 87(2)(b) was issued a § 87(2)(b) summons.

This case exceeded the 90-day benchmark by nearly four months due to the investigation making contact attempts to 15 of the 16 total civilians involved, and because of the extensive officer interviews that were required. An attorney was consulted regarding the secondary entry allegations of this complaint.

Exterior security footage was obtained from § 87(2)(b). However, while the footage displays a vast police response to the location, no FADO allegations were captured (Board Review 01).

Mediation, Civil, and Criminal Histories

- Due to multiple arrests, this case was unsuitable for mediation.
- § 87(2)(b), § 87(2)(c)
§ 87(2)(b), § 87(2)(c)
§ 87(2)(b), § 87(2)(c)
- § 87(2)(b), § 87(2)(c)
§ 87(2)(b), § 87(2)(c)
§ 87(2)(b), § 87(2)(c)
- § 87(2)(b), § 87(2)(c)
§ 87(2)(b), § 87(2)(c)
§ 87(2)(b), § 87(2)(c)
- Eight Notice of Claims were filed for this incident. § 87(2)(b) and another individual, § 87(2)(b), the guardian of § 87(2)(b), who was formerly unknown to the investigation, are each seeking \$500,000 as redress. § 87(2)(b) who filed Notice of Claims on behalf of herself, § 87(2)(b) and § 87(2)(b) is seeking \$500,000 for each claim as redress. § 87(2)(b) is claiming \$1,000,000 as redress, and § 87(2)(b) did not disclose the sum of money he is seeking as redress (Board Review 11).
- According to the Manhattan Criminal Court Summons database, § 87(2)(b)'s summons disposition was sealed and was therefore unavailable to the investigation.

Civilian and Subject Officer CCRB Histories

- This is the first CCRB complaint for § 87(2)(b) and § 87(2)(b) (Board Reviews 12, 13, 14, 15, 16, 17, 18, 19, and 20).
- PO Pino has been a member of the NYPD for three years. PO Pino does not have any prior allegations against him.
- PO Uddin has been a member of the NYPD for three years. PO Uddin does not have any prior allegations against him.
- PO Mancusi has been a member of the NYPD for three years. PO Mancusi has been the subject to four other allegations, § 87(2)(g).
- PO Baresi has been a member of the NYPD for five years. PO Baresi has been the subject to four prior allegations stemming from three cases, three of which are force allegations. There have been no substantiated allegations against PO Baresi.
- Sgt. Capella has been a member of the NYPD for 22 years. Sgt. Capella has been the subject to one prior allegation from CCRB Case #200201435, which was closed as complainant unavailable.
- PO Jonathan Trahan has been a member of the NYPD for four years. PO Trahan has been the subject of two prior allegations stemming from two cases. There have been no

substantiated allegations against PO Trahan, § 87(2)(g)

Potential Issues

- Over the course of the investigation, attempts were made to obtain sworn statements from both § 87(2)(b) and § 87(2)(b). However, both individuals provided un-sworn phone statements but were ultimately uncooperative with the investigation. Additionally, while an initial phone statement was also obtained from § 87(2)(b) he ultimately declined to provide an in-person statement, under advisement of his attorney. Therefore, sworn statements from § 87(2)(b) and § 87(2)(b) all of whom alleged FADOs, were not obtained (See IAs).
- § 87(2)(b) and § 87(2)(b) were all identified as being present during the incident, and § 87(2)(b) and § 87(2)(b) all provided phone statements to the investigation. § 87(2)(g)
- § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) described the officer who kicked him and pushed him against the wall as a 5'10" tall, 200-pound Hispanic male, who had a bald spot in the middle of his head and who appeared to be in his 30s. He further alleged that a different officer, who he could not describe further than a Hispanic male in plainclothes, stomped on his head. PO Mancusi, who is a 5'7" tall, 160-pound white male with brown hair, according to his NYPD photograph, does not fit § 87(2)(b)'s physical description, but admitted to being the officer who pushed § 87(2)(b) against the wall. § 87(2)(g)
- The investigation determined that numerous officers entered § 87(2)(b) in search of PO Pino and PO Uddin. However, Sgt. Capella acknowledged in his in-person statement as being the initial officer who made the decision to enter the apartment and search for the officers. Conversely, PO Uddin acknowledged that he later made the decision to enter the apartment on his own to arrest § 87(2)(b) independent of Sgt. Capella's initial justification. § 87(2)(g)

§ 87(2)(g) Additionally, it is undisputed between PO Uddin and Sgt. Capella that PO Uddin conducted a secondary search of the apartment at the instruction of Sgt. Capella. § 87(2)(g)

- § 87(2)(b) described the officer who spoke discourteously to her in the tenth floor stairwell as a stocky white male, who was “not very tall,” wore plainclothes, a black hat, and who appeared to be in his early 40s. All officers interviewed denied saying this phrase, and denied knowing who did. Additionally, while § 87(2)(b) corroborated these exact discourteous phrases on behalf of § 87(2)(b) he affiliated them to a different officer, one who he described as a 6’2” tall, 140-pound white male, with a slim build, black hair, a black coat, and blue jeans. § 87(2)(g)
- § 87(2)(b) described the officer who punched him in the face as only a male who was shorter than 6’ tall. § 87(2)(b) and § 87(2)(b) the only two reported witnesses, both denied seeing § 87(2)(b) get punched and were therefore unable to provide a better description of this officer. Furthermore, no Threat, Resistance, or Injury (TRI) Report was prepared regarding any force used against § 87(2)(b) and all interviewed officers denied punching § 87(2)(b) or seeing another officer do so. § 87(2)(g)
- § 87(2)(b) and § 87(2)(b) described the officer who spoke discourteously to § 87(2)(b) as a 6’+ tall, slender Middle Eastern or Indian male, with black hair, wearing a white uniform shirt, and who appeared to be in his late-20s. § 87(2)(b) and § 87(2)(b) who § 87(2)(b) identified as witnessing this allegation, were unable to describe the officer who cursed at § 87(2)(b). The investigation identified a total of eight officers, ranked either Lieutenant or higher and would have been wearing a white uniform shirt, as working within the four commands that responded to this incident. However, none of the eight officers fit the general description provided by both § 87(2)(b) and § 87(2)(b). A ninth officer, Lieutenant Muhammad Ashraf, who is a 5’11” tall, 210-pound Asian male, with black hair, brown eyes, and who was assigned to the 23rd Precinct at the time of this incident, according to the MOS Photo Machine, fits the general description of the subject officer. However, Lieutenant Ashraf confirmed in his CCRB interview that he was not working on the night of the incident, which was confirmed by his memo book. The ICAD generated for this incident noted that Deputy Inspector Erik Hernandez of PSA5 was the only officer who wore a white shirt that responded to the incident. However, Deputy Inspector Hernandez, who is a 5’8” tall, 185-pound Hispanic male, with salt and pepper hair, does not fit the description provided by § 87(2)(b) and § 87(2)(b). Furthermore, multiple officers interviewed by the CCRB from both PSA5 and the 25th Precinct acknowledged that an officer with a white uniform shirt was present inside of the apartment, but was unknown to them because he was not assigned to either of the two commands. § 87(2)(g)

- § 87(2)(b) alleged in her unsworn phone statement that the officer who spoke discourteously to her was a 5'5" tall, average-built Hispanic male, with dark brown hair in a ponytail, who wore an NYPD uniform and who appeared to be in his mid-30s. § 87(2)(b) was ultimately uncooperative with the investigation, and did not provide any additional identifying information regarding this officer. Additionally, 11 Hispanic male officers were identified by the investigation as being present during the incident, and § 87(2)(b)'s description was too general to conduct mass interviews in an attempt to identify the subject officer. Furthermore, all officers interviewed denied this allegation and denied hearing any other officer speak discourteously. § 87(2)(g)
- During his unsworn phone statement, § 87(2)(b) alleged that a plainclothes officer, whom he described as a 5'6" tall, bald white male who appeared to be in his 30s, punched him in the face in the kitchen, and that he was subsequently "roughed up" by multiple officers. § 87(2)(b) described the officer who punched § 87(2)(b) as a 5'10" tall white male, with blonde hair and who wore an NYPD uniform. She also could not describe any of the additional officers who used force against § 87(2)(b). Sgt. Capella, PO Uddin, PO Trahan, and PO Taylor Young, who were all in uniform and present in the kitchen, denied punching § 87(2)(b) and denied seeing another officer do so. Additionally, none of the three officers fit either description of the officer who allegedly punched § 87(2)(b) according to their NYPD photographs. Furthermore, while both PO Uddin and PO Trahan generated TRI Reports acknowledging force against § 87(2)(b), neither reports indicate that hand strikes were used. § 87(2)(g)
- § 87(2)(b) alleged during her in-person statement that, during the physical struggle in the kitchen, an officer pulled her hair. She further alleged that a different officer then shoved her. However, she was unable to provide a description of either of these two subject officers. The only two other civilians that were in the kitchen at the time of the incident and would have seen this occur, § 87(2)(b) and § 87(2)(b) were both uncooperative with the investigation, as previously discussed. Furthermore, all officers interviewed that were identified as being present in the kitchen denied taking these actions and denied seeing another officer take them, and no TRI Reports exist acknowledging any force against § 87(2)(b) that would have helped identify these subject officers. § 87(2)(g)
- § 87(2)(b) alleged during her unsworn phone statement that an officer who she described as a 5'3" tall, bald, muscular white male in a plaid shirt, and who appeared to be approximately in his 40s, punched her in the face inside of the apartment. Similarly, § 87(2)(b) alleged in her unsworn phone statement that an officer who she described as a 5'5" tall, stocky, bald white male, who was in uniform and who appeared to be in his 30s, pushed her into a microwave inside the kitchen. However, both § 87(2)(b) and

§ 87(2)(b) as previously stated, were ultimately uncooperative with the investigation and did not provide any other specific identifying information regarding their respective subject officers. Additionally, none of the other civilians in this case testified to witnessing either of these allegations. Furthermore, no TRI Reports exist acknowledging any force against either § 87(2)(b) or § 87(2)(b) and all officers interviewed denied these allegations and denied seeing any other officer use force against either § 87(2)(b) or § 87(2)(b) § 87(2)(g)

- § 87(2)(b) during his unsworn phone statement, alleged that officers “roughed” him up near the elevators on the tenth floor. However, § 87(2)(b) did not provide a description of the potential subject officers. § 87(2)(g)
- § 87(2)(b) who is 6’5” tall, described the officer who kicked him and spoke discourteously to him immediately after his handcuffing near the tenth floor elevators as a 5’2” tall uniformed white male of Italian descent, who had buggy eyes, short black hair, and who appeared to be in his 30s. PO Joshua Faranda, a plainclothes officer of the PSA 5 Anti-Crime unit, acknowledged helping other uniformed officers handcuff § 87(2)(b) but was unable to identify the officers that he assisted, noting that he believed them to be from a different command. As per § 87(2)(b)’s statement, no other civilians were in the vicinity to witness these allegations or to help identify this officer, and all other officers interviewed denied these allegations or seeing another officer take part in them. Furthermore, no TRI Reports exist acknowledging any force used against § 87(2)(b) during the incident, and PO Pino, who was § 87(2)(b)’s summoning officer, was undisputedly never in the hallway of the tenth floor during the incident. § 87(2)(g)

Allegations Not Pleaded

- **Discourtesy:** § 87(2)(b) alleged in his in-person statement that PO Pino told both § 87(2)(b) and § 87(2)(b) “Shut the fuck up and go back to the apartment.” However, neither § 87(2)(b) nor § 87(2)(b) made any mention that PO Pino spoke discourteously to them in any of their statements to the CCRB. § 87(2)(g)
- **Abuse of Authority:** During her in-person statement, § 87(2)(b) provided the CCRB photos of broken glasses, a broken Hennessey bottle, her kitchen table, and the remnants of a bedroom mirror, all of which she alleged was broken during the incident; though § 87(2)(b) acknowledged not personally witnessing her property be damaged. § 87(2)(g)

- **Discourtesy:** During an unsworn phone statement, § 87(2)(b) alleged that an officer told § 87(2)(b) “If you want to go, let’s fucking go.” However, § 87(2)(b) who provided a sworn statement to the CCRB, did not allege that any officer spoke discourteously to him during the incident. § 87(2)(g)

Allegation A – Force: Police Officer Christopher Pino used physical force against § 87(2)(b)

It is undisputed that, when officers tried to place § 87(2)(b) in handcuffs, § 87(2)(b) spit in PO Pino’s face. It is further undisputed that force was used to effectively get § 87(2)(b) into custody, and that § 87(2)(b) did not sustain any injuries as a result of the physical struggle.

§ 87(2)(b) alleged that, after spitting in PO Pino’s face, PO Pino pushed § 87(2)(b) on his chest, causing him to fall onto the stairs. PO Pino then picked § 87(2)(b) back up by his shirt, and PO Uddin was able to secure the handcuffs on him. § 87(2)(b) did not mention being punched in the face during the physical struggle (Board Review 25).

§ 87(2)(b) alleged that, after § 87(2)(b) spit in PO Pino’s face, PO Pino punched him once in the face. In response, § 87(2)(b) spit in PO Pino’s face three more times, and § 87(2)(b) and § 87(2)(b) then went inside of the apartment to go get § 87(2)(b). By the time § 87(2)(b) came back outside, § 87(2)(b) was already in handcuffs. She did not allege that § 87(2)(b) was ever pushed or taken to the ground while she was in the hallway (Board Review 46).

PO Pino testified that § 87(2)(b) spit in his face multiple times, and that he tried to forcibly take § 87(2)(b) to the ground to control him, but that it was unsuccessful because of § 87(2)(b)’s size. He denied punching § 87(2)(b) or ever actually taking him to the ground, and attested that the presence of the PSA 5 Anti-Crime Unit, PO Mancusi and PO Baresi, caused § 87(2)(b) to “ease up” on his resistance and allow the officers to handcuff him (Board Review 30).

PO Uddin denied that PO Pino ever punched or pushed § 87(2)(b) and did not see PO Pino grab any other area of § 87(2)(b) aside from his hands (Board Review 31).

§ 87(2)(b)’s arrest photograph does not display any visible injuries to his face (Board Review 55).

An officer may use force to reasonably ensure the safety of a member of the service or a third person, to take a lawfully arrested person into custody, or to prevent one’s escape from custody. Some factors to consider in determining when to use force are the actions taken by the subject, whether the subject is actively resisting custody, and the immediacy of the perceived threat or harm to others. NYPD Patrol Guide, Procedure 221-01 (Board Review 56).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: Police Officer Moahmmad Uddin threatened § 87(2)(b) and individuals with the use of force.

It is undisputed that § 87(2)(b) and § 87(2)(b) all entered the tenth floor stairwell, a narrow space, during the officers' physical struggle with § 87(2)(b) and that PO Uddin took his baton out. It is further undisputed that PO Pino and PO Uddin were the only two officers present at the time of this allegation, and that backup was called at the time the family members came out of the apartment.

§ 87(2)(b) alleged that seven family members came out of the apartment, and multiple family members began yelling at the officers, "Why are you arresting him," and, "What's going on?" PO Uddin then took his baton out, held it across his chest, and yelled at everyone, "Get back!" § 87(2)(b) and § 87(2)(b) were approximately one foot away from PO Uddin at the time he pulled out his baton (Board Review 46).

§ 87(2)(b) and § 87(2)(b) all denied seeing PO Uddin take his baton out during the incident. None of the other civilians interviewed alleged that PO Uddin took his baton out during the incident. § 87(2)(b) corroborated § 87(2)(b)'s testimony, stating that multiple family members began screaming and trying to figure out what was going on (Board Review 21, 22, 23, 24, 25, 36, 40, 41, 44, 45, 52, 53, and 54).

PO Uddin testified that he took his baton out during the physical struggle with § 87(2)(b) because he felt unsafe from there being "a lot" of people in the stairwell who were "very close." He never opened his baton all the way, and instead re-holstered it to assist PO Pino in subduing § 87(2)(b) (Board Review 31).

PO Pino stated that approximately more than five people entered the stairwell during the struggle with § 87(2)(b) all of whom were approximately one foot away from the officers. PO Pino observed PO Uddin take his baton out for crowd control, but did not ultimately see what he did with it because he was busy attempting to get § 87(2)(b) in handcuffs (Board Review 30).

An officer may use force to reasonably ensure the safety of a member of the service or a third person, to take a lawfully arrested person into custody, or to prevent one's escape from custody. Some factors to consider in determining when to use force are the immediacy of the perceived threat or harm to others and the presence of hostile crowd or agitators. NYPD Patrol Guide, Procedure 221-01 (Board Review 56).

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: Police Officer Andrew Mancusi used physical force against § 87(2)(b)

Allegation D – Force: Police Officer Anthony Baresi used physical force against § 87(2)(b)

It is undisputed that, after being handcuffed, officers took § 87(2)(b) to the elevators on the ninth floor.

§ 87(2)(b) alleged that PO Pino was talking to PO Mancusi when § 87(2)(b) turned around and looked at the officers. PO Mancusi told § 87(2)(b) “If you look back again, I’m going to make you pay for it.” § 87(2)(b) looked back a second time, and PO Mancusi kicked him in the back of his right knee, and pushed his right shoulder towards the wall. § 87(2)(b)’s back hit the wall, and he “guessed” he fell to the ground on his side. PO Baresi then stomped once on the right side of § 87(2)(b)’s head, and moved his foot back and forth similar to someone killing a roach. § 87(2)(b) did not sustain any injuries (Board Review 25).

PO Mancusi testified that § 87(2)(b) was “combative,” by twisting his upper body back and forth and moving his legs back and forth. PO Mancusi held onto both of § 87(2)(b)’s arms, which were in handcuffs, while facing him, and attempted to lunge his upper body towards one of the other officers. In response, PO Mancusi pushed § 87(2)(b) back, which caused § 87(2)(b) to inadvertently hit the wall from the momentum. PO Mancusi stated that he and § 87(2)(b) may have “stumbled” onto the floor, but he could not recall for certain. PO Mancusi denied ever kicking § 87(2)(b) and denied that he or any other officer used any additional physical force against him (Board Review 33).

PO Baresi denied stomping on § 87(2)(b)’s head, and denied that any officer used any physical force against § 87(2)(b) on the ninth floor or that § 87(2)(b) provided any physical resistance; though he later stated that he could not recall whether § 87(2)(b) was ever pushed against the wall (Board Review 32).

PO Pino stated that the Anti-Crime Unit held § 87(2)(b) who was walking back and forth, by his arms to keep him still, but did not recall if both PO Mancusi and PO Baresi did this or if it was just one officer. He stated that it was successful, and denied that either officer kicked, pushed, or stomped on the head of § 87(2)(b). PO Uddin, who testified that he was only on the ninth floor briefly prior to going back upstairs, denied that there was any physical struggle with § 87(2)(b) while he was present. All other officers interviewed denied being on the ninth floor at any point (Board Reviews 30, 31, 34, 37, 38, and 39).

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Abuse of Authority: Sergeant Jose Capella entered and searched § 87(2)(b) in Manhattan.

It is undisputed that multiple officers entered and searched § 87(2)(b)'s apartment in search of PO Pino and PO Uddin, within a short timeframe of § 87(2)(b) being removed to the ninth floor. It is also undisputed that, after the search for the officers was completed, officers collectively began to exit the apartment.

§ 87(2)(b) and § 87(2)(b) who all witnessed the officers' entry into the apartment, all alleged that the door to the apartment was pushed in by unidentified officers, leading to multiple officers forcibly entering the apartment. § 87(2)(b) and § 87(2)(b) all alleged that an unidentified male officer stuck his baton between the door and the door hinges to keep the door from closing, allowing the officers to push the door open. § 87(2)(b) denied ever being asked for consent or consenting for the officers to enter the apartment. Neither § 87(2)(b) nor § 87(2)(b) alleged that any officer asked for consent prior to entering the apartment (Board Reviews 36, 40, 41, and 46).

§ 87(2)(b) and § 87(2)(b) collectively alleged that, once inside the apartment, multiple unidentified officers searched § 87(2)(b)'s room, § 87(2)(b)'s room, and § 87(2)(b)'s room by looking underneath the beds and inside of the closets in each room, with § 87(2)(b) and § 87(2)(b) alleging that they were told that the search was for an officer. § 87(2)(b) who stayed in the kitchen, alleged that multiple officers entered the kitchen and stayed with her and § 87(2)(b) (Board Reviews 36, 40, 41, 46, and 54).

§ 87(2)(b) and § 87(2)(b) were consistent with the other civilians' testimony in their un-sworn phone statements, alleging that officers forcefully entered the apartment, with § 87(2)(b) and § 87(2)(b) further alleging that officers explained that they were searching for an officer (Board Reviews 21, 22, 23, 24, 45, and 52). § 87(2)(b) and § 87(2)(b) were not present in the apartment during the officers' entry and search, and therefore did not have any testimony for this allegation (Board Reviews 25, 35, and 53).

Sgt. Capella testified that he arrived to § 87(2)(b) after hearing PO Pino's and PO Uddin's unit "frantically" calling for assistance. Upon arriving at the tenth floor via the elevator, he asked unidentified officers, whom he did not know, where PO Uddin and PO Pino were, because he did not see them in the hallway amongst the 10 to 15 other officers that were in the hallway. An unidentified officer suggested that he didn't know where the officers were, and recommended that Sgt. Capella go to § 87(2)(b)'s apartment, noting that PO Pino and PO Uddin might be inside. Sgt. Capella approached § 87(2)(b) who was standing in the doorway of the apartment, and asked her five or six times to enter the apartment to make sure his officers were safe, and informed her that once he had confirmation of that, the officers would leave. Sgt. Capella noted that he believed PO Pino and PO Uddin to be in the apartment because the initial job was from the tenth floor, and because the unidentified officer indicated that the officers might be inside. § 87(2)(b) ultimately turned around, walked further into the apartment, and said, "Ok. Come in." Upon entering, Sgt. Capella asked § 87(2)(b) once to search the bedrooms, stating, "I have to make sure my cops are safe." § 87(2)(b) ultimately consented to officers searching the apartment, and officers conducted a search of the apartment. While they were searching, PO

Uddin entered the apartment and informed Sgt. Capella that he and PO Pino were okay. Sgt. Capella and the officers began to leave the apartment (Board Review 34).

PO Uddin, who entered the apartment upon seeing Sgt. Capella inside after coming back upstairs from the ninth floor, stated that he spoke with Sgt. Capella and confirmed that he was okay. PO Pino stated that, once he took § 87(2)(b) to the ninth floor, he never went back upstairs to the tenth floor. PO Faranda, PO Trahan, and PO Young all testified that they only entered the apartment among seeing other officers already inside. PO Baresi and PO Mancusi both stated that they never entered the tenth floor or § 87(2)(b)'s apartment (Board Reviews 30, 31, 32, 33, 37, 38, and 39).

The ICAD, which was initially generated for an unrelated job on the 15th floor of § 87(2)(b), notes that PSA 5 Sector "B" called for additional units at 10:52 p.m. The Event Unit Information shows that ten total units, from PSA 5, the 23rd Precinct, the 25th Precinct, and the 32nd Precinct, documented that they arrived on scene. The Roll Calls of these respective precincts indicate that 21 officers were assigned in total to the responding units from the ICAD (Board Reviews 42, 58, 59, 60, and 61).

Exterior security footage obtained from § 87(2)(b) shows that, within a four-minute span beginning at 10:54 p.m., a total of 68 individuals, the majority of them appearing to wear NYPD uniforms, are seen rushing into the apartment building (Board Review 01).

To satisfy the emergency doctrine, the police must have reasonable grounds to believe that an emergency is at hand and that there is an immediate need for their assistance for the protection of life or property. People v. Mitchell, 39 N.Y.2d 173 (1976). The search must not be primarily motivated to arrest and seize evidence, and there must be a reasonable basis, approximating probable cause, to associate the emergency with the area to be searched. Id. Police officers are permitted to rely and act based on the information provided by a fellow officer. People v. Lubrano, 117 A.D. 3d 1239 (2014) (Board Reviews 68 and 69).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Abuse of Authority: Police Officer Moahmmad Uddin entered § 87(2)(b) in Manhattan.

Allegation G – Abuse of Authority: Sergeant Jose Capella authorized a search of § 87(2)(b) in Manhattan.

§ 87(2)(g)

It is undisputed that § 87(2)(b) who was initially in the stairwell at the time of § 87(2)(b)'s physical interaction with officers, left the stairwell and entered § 87(2)(b)'s apartment. It is also undisputed that PO Uddin entered § 87(2)(b)'s apartment, after the officers' initial entry, with the intent to arrest § 87(2)(b). Further undisputed is that PO Uddin, upon telling Sgt. Capella that he and PO Pino were safe, informed Sgt. Capella that § 87(2)(b) was inside of the apartment and conducted a search of § 87(2)(b)'s apartment, under the instruction of Sgt. Capella, for § 87(2)(b). Finally, it is undisputed that PO Uddin ultimately identified § 87(2)(b) in the kitchen of the apartment.

PO Uddin testified that § 87(2)(b) pushed him during the physical struggle with § 87(2)(b) on the tenth floor, and that he observed § 87(2)(b) subsequently run into § 87(2)(b)'s apartment. PO Uddin did not attempt to initiate an arrest of § 87(2)(b) prior to § 87(2)(b) running inside. After getting § 87(2)(b) into custody, PO Uddin left him on the ninth floor with other officers so that he could go back up to the tenth floor to affect § 87(2)(b)'s arrest. PO Uddin could not estimate how long he was on the ninth floor for, only describing it as "not very long." He went back upstairs to the tenth floor and observed officers, including Sgt. Capella, inside of § 87(2)(b)'s apartment, so he entered. After informing Sgt. Capella what happened, Sgt. Capella then went to § 87(2)(b) and explained that a search needed to be conducted for § 87(2)(b) who then consented. PO Uddin and an unidentified officer then entered two bedrooms, conducted a visual, and looked underneath the beds. He returned to the living room, where Sgt. Capella told him to check the kitchen. Upon entering the kitchen is when he observed § 87(2)(b) and identified him (Board Review 31).

Sgt. Capella stated that he was unaware of where the initial physical struggle between officers and § 87(2)(b) took place. After PO Uddin informed Sgt. Capella of the situation with § 87(2)(b) he instructed PO Uddin to look around the apartment. PO Uddin never told Sgt. Capella why he believed § 87(2)(b) to be in the apartment. After an unsuccessful search, Sgt. Capella told PO Uddin to check the kitchen because he had seen a male in there when he had initially walked in. PO Uddin then identified § 87(2)(b) (Board Review 32).

The Police Radio Communications audio demonstrates that PO Uddin and PO Pino first asked for assistance 17 minutes and 16 seconds into the recording. Ten minutes and 32 seconds later, it is relayed that all officers are accounted for (Board Review 62).

In order for the hot pursuit exception to apply for a warrantless entry, officers must have probable cause to arrest an individual while he or she is outside a private location, and the arrest must have been set in motion in a public place, prior to the individual's flight to a private

location. People v. Hunter, 92 A.D. 3D 1277 (2012). Police officers are entitled to rely and act based on the information provided by a fellow officer. People v. Lubrano, 117 A.D. 3d 1239 (2014) (Board Reviews 69 and 70).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation H – Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation I – Force: An officer used physical force against § 87(2)(b)

Allegation J – Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation T – Force: An officer used physical force against § 87(2)(b)

Allegation U – Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) all alleged that officers both spoke discourteously to them and used physical force against them, respectively (Board Reviews 35, 40, 41, and 53).

As discussed in both the Potential Issues section and the Explanation of Subject Officer Identification section, the police response to the location, as seen in the video footage, was significantly greater than what was noted in police documentation. § 87(2)(g)

§ 87(2)(g)

Allegation K – Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation Q – Force: An officer used physical force against § 87(2)(b)

Allegation R – Force: An officer used physical force against § 87(2)(b)

Allegation S – Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) all alleged in un-sworn phone statements that officers both spoke discourteously to them and used physical force against them, respectively (Board Reviews 44, 45, and 52).

None of the other civilians interviewed either witnessed the allegations or could provide detailed information regarding them (Board Reviews 21, 22, 23, 24, 25, 35, 36, 40, 41, 46, 53, and 54).

§ 87(2)(g)

§ 87(2)(g)

Allegation L – Force: Officers used physical force against § 87(2)(b)

Allegation M – Force: Sergeant Jose Capella used physical force against § 87(2)(b)

Allegation N – Force: Police Officer Moahmmad Uddin used physical force against § 87(2)(b)

Allegation O – Force: Police Officer Jonathan Trahan used physical force against § 87(2)(b)

Allegation P – Force: Officers used physical force against § 87(2)(b)

It is undisputed that, after PO Uddin identified § 87(2)(b) in the kitchen, a physical struggle ensued to get him into custody. The extent of the force used, however, is in dispute.

§ 87(2)(b) alleged that after PO Uddin identified § 87(2)(b) § 87(2)(b) stepped back with one foot and § 87(2)(b) held § 87(2)(b) from behind him, around his waist. An unidentified male officer punched § 87(2)(b) once in the jaw, and approximately 10 to 15 officers grabbed him and took him down to the ground, though she did not know where they grabbed him. § 87(2)(b) fell to the ground face down as well, as a result of holding onto § 87(2)(b) § 87(2)(b) held onto § 87(2)(b)'s arm with one of her hands until an unidentified officer pulled her hand off of his arm. An unidentified officer also pulled her hair in an attempt to separate her from § 87(2)(b) and § 87(2)(b) only saw officers pull § 87(2)(b)'s shoulders back, believing that officers were trying to grab his arms. § 87(2)(b) provided no resistance to being handcuffed, and he was placed in handcuffs less than 30 seconds after being taken to the ground. Once § 87(2)(b) was taken out of the apartment, an unidentified officer who was holding onto § 87(2)(b)'s arm, then shoved her in the direction of § 87(2)(b) § 87(2)(b) sustained a laceration to her left buttocks, which required seven stitches, but did not know how she sustained the injury. The legs on the glass table were broken as a result of the struggle, and liquor bottles ended up on the floor; though she did not believe them to have broken (Board Review 46).

As previously stated in the Potential Issues section, § 87(2)(b) did not provide an in-person statement, but alleged in his brief, un-sworn phone statement that an unidentified officer punched him in the face. He and § 87(2)(b) were then “roughed up” by officers (Board Review 45).

§ 87(2)(b) alleged that multiple officers entered the kitchen and began throwing punches at § 87(2)(b) but he could not see exactly what was happening because of the amount of people blocking his view. § 87(2)(b) was slammed into the kitchen table, and both he and § 87(2)(b) fell onto the ground while officers continued to punch him. An unidentified officer yanked § 87(2)(b)'s hair, pulling her back down to the ground, but § 87(2)(b) could not provide further details about any of the struggle. § 87(2)(b) who could not see fully into the kitchen, only saw § 87(2)(b) fall to the kitchen floor, and § 87(2)(b) fall on top of him. She could not provide any further details. § 87(2)(b) and § 87(2)(b) who both were uncooperative in the investigation, stated in un-sworn phone statements that § 87(2)(b) was slammed into the kitchen table by officers. § 87(2)(b) further alleged that § 87(2)(b) was subsequently slammed into the table on top of § 87(2)(b) (Board Reviews 36, 41, 44, and 52).

Sgt. Capella testified that he told § 87(2)(b) who was standing behind § 87(2)(b) that he was under arrest, and § 87(2)(b) pushed § 87(2)(b) towards the officers. He instructed § 87(2)(b) to get out of the way, and she leaned forward. He grabbed § 87(2)(b)'s left shoulder twice, but § 87(2)(b) shrugged his shoulder and backed away both times. Approximately four or five officers from different commands then grabbed § 87(2)(b) by either his arm or shoulder, and § 87(2)(b) continued to roll his shoulder. He fell to the ground incidentally from his resistance, and Sgt. Capella told § 87(2)(b) "Stop resisting. It's over," approximately three times. § 87(2)(b) wiggled his body and rotated his shoulders, and Sgt. Capella grabbed § 87(2)(b)'s arms from underneath his body and placed him in handcuffs. He denied striking § 87(2)(b) at any point, and denied that any other officer did so. He denied pulling § 87(2)(b)'s hair and denied that any other officer did so. Sgt. Capella did not know of § 87(2)(b) falling to the ground or being involved in the struggle to any extent (Board Review 34).

PO Uddin stated that he first attempted to grab § 87(2)(b)'s hands, but § 87(2)(b) pushed him away, causing PO Uddin to fall into a shopping cart in the kitchen. Other unidentified officers from another command then forcibly took § 87(2)(b) to the ground and placed him in handcuffs. PO Uddin denied that he assisted in § 87(2)(b)'s apprehension, and did not see an officer punch or strike § 87(2)(b). PO Uddin did not see § 87(2)(b) get taken to the ground, and did not see any force used against her (Board Review 31).

PO Trahan testified that, while in the living room trying to leave the apartment, he observed an unknown hand reach out from the kitchen and pull an unidentified plainclothes officer by the back of the collar into the kitchen. Every officer in front of PO Trahan then rushed into the kitchen, and PO Trahan observed § 87(2)(b) standing with his back against the window holding § 87(2)(b) with his arm over her shoulder, similar to a seatbelt. § 87(2)(b) was swinging at the five to seven officers in front of PO Trahan, and there were multiple people pushing and shoving in the kitchen. The officers in front of PO Trahan fell backwards into PO Trahan, who ended up falling on the floor. Multiple officers fell onto PO Trahan's right knee, and PO Trahan also received a cut on his hand from broken liquor bottles on the ground. He denied making any physical contact with § 87(2)(b) and did not assist in apprehending him. He could not specify what force was used on § 87(2)(b) or how he was taken to the ground because PO Trahan himself was on the ground during the struggle, though he observed § 87(2)(b) still swinging at officers while on the ground. PO Trahan also denied pulling § 87(2)(b)'s hair or using any force against § 87(2)(b) and denied seeing another officer do so. He was ultimately helped out of the pile and the apartment by his partner, PO Young, prior to § 87(2)(b) being placed in custody. Upon seeing his TRI Report that he generated, PO Trahan clarified that he only generated it because § 87(2)(b) was taken down by other officers (Board Review 37).

PO Young corroborated PO Trahan's testimony, with the following distinctions: Unidentified plainclothes officers from different commands grabbed § 87(2)(b) by his upper body and attempted to unsuccessfully bring him to the ground because he was swinging at officers. § 87(2)(b) ultimately fell to the ground as a result of various pulling and pushing in the apartment, and was told two or three times by the unidentified officers to put his hands behind his back. § 87(2)(b) did not comply, so officers began trying to pull his arms behind his back. He denied making any physical contact with § 87(2)(b) during the struggle, and did not see any officer strike § 87(2)(b). PO Young denied pulling § 87(2)(b)'s hair and denied seeing another officer do so. He denied seeing any force used against § 87(2)(b) and denied using any himself (Board Review 38).

§ 87(2)(b) provided a photo to the CCRB of § 87(2)(b) which shows a laceration to her left buttocks. § 87(2)(b) provided a photo showing her kitchen floor after the incident, which shows various utensils, supplies, and broken liquor bottles scattered throughout the floor (Board Reviews 63 and 64).

§ 87(2)(b)'s arrest photograph appears to display minor swelling to his upper right lip (Board Review 65).

Two TRI Reports were generated regarding the physical struggle with § 87(2)(b) by both PO Uddin and PO Trahan. The reports both acknowledge that § 87(2)(b) was taken down by officers in defense of other members of service and to overcome resistance and aggression. PO Uddin noted that § 87(2)(b) was pushing and shoving, while PO Trahan noted in his report that § 87(2)(b) was wrestling and grappling. Neither report acknowledges that a hand strike was used against § 87(2)(b) (Board Reviews 47 and 48).

§ 87(2)(b)'s medical records, obtained from § 87(2)(b), noted that § 87(2)(b) sustained a laceration to her left buttocks requiring seven sutures (See Privileged Documents).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Squad: 7

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date